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MAR 5 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Review --	)	
Review of Policies and Rules Concerning	)	CC Docket No. 00-257
Unauthorized Changes of Customers	)	
Long Distance Carriers	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Change Provisions of the	)	
Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

**MOTION TO ACCEPT LATE-FILED REPLY COMMENTS**

Global Telecompetition Consultants ("GTC") hereby requests that the FCC accept for filing the attached Reply Comments, which were originally due on March 1, 2001, but were filed with the Commission on March 2, 2001. GTC failed to file the instant Motion to Accept Late-Filed Reply Comments concurrently with its March 2<sup>nd</sup> filing of its Reply Comments and through this filing seeks to rectify the oversight.

On December 30, 1999, GTC filed a Petition for Rulemaking ("GTC Petition") seeking to modify the Commission's subscriber carrier selection change rules, C.F.R. § 64.1100 *et. seq.*, in order to accommodate carrier-to-carrier sales, purchases or transfers of customer bases without the burdensome and costly requirement that carriers first obtain a waiver from the Commission ("waiver requirement"). On January 18, 2001, the Commission initiated the instant proceeding to address the concerns raised in the GTC Petition.<sup>1</sup> Accordingly, GTC has a considerable stake in the outcome of the proceeding.

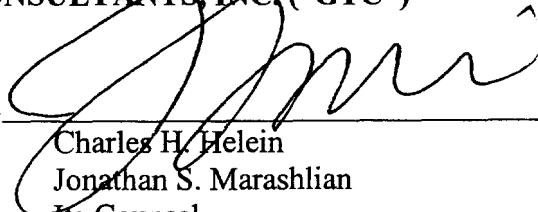
<sup>1</sup> *Third Notice of Proposed Rulemaking, 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket Nos. 00-257, 94-129, FCC 00-451 ("NPRM").*

GTC used the additional day to prepare Reply Comments which we believe will assist the Commission in resolving the issues before it in this proceeding. GTC also submits that no party will be prejudiced by the late filing, as our Reply Comments are a concise six pages and the number of issues raised by the proceeding are limited. Further, we will serve all parties who have filed comments and reply comments to date with copies of GTC's filing by first-class mail, today, in order to provide all parties with a complete record of the proceeding.

Respectfully submitted,

**GLOBAL TELECOMPETITION  
CONSULTANTS, INC. ("GTC")**

By: \_\_\_\_\_



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**REPLY COMMENTS**

Of  
GLOBAL TELECOMPETITION CONSULTANTS, INC. ("GTC")

Global Telecompetition Consultants, Inc. ("GTC") is a telecommunications consulting firm managed by individuals with a variety of business, management, operational, networking and legal/regulatory expertise. GTC's collective experience includes competitive interexchange carriers, competitive local exchange service providers, telecom operations and pricing, local and long-haul network design and engineering, domestic and international services, financing, staffing/training, price/cost analysis, marketing programs, Internet/e-commerce, and the legal and regulatory issues which surround and affect all of these telecommunications areas.

GTC often consults and advises its common carrier clients on issues pertaining to the sale, purchase or transfer of their telephone subscriber bases. Responding to concerns raised by its clients, on December 30, 1999, GTC filed a Petition for Rulemaking ("GTC Petition") seeking to modify the Commission's subscriber carrier selection change rules, C.F.R. § 64.1100

*et. seq.*, in order to accommodate carrier-to-carrier sales, purchases or transfers of customer bases without the burdensome and costly requirement that carriers first obtain a waiver from the Commission (“waiver requirement”). At the time, GTC advised the Commission that it perceived certain procedural infirmities related to the manner in which the waiver requirement “rule” came into being and recommended that the Commission address the issues underlying the waiver requirement in a rulemaking proceeding.

Heeding the GTC Petition, on January 18, 2001, the Commission issued its *Third Notice of Proposed Rulemaking*, 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket Nos. 00-257, 94-129, FCC 00-451 (“*NPRM*”). In the *NPRM*, the Commission proposed rules that include specific processes and procedures that carriers must adhere to when dealing with the sale, transfer or purchase of a customer base, thereby effectively eliminating the waiver requirement.

Interested parties recently filed Comments in response to the *NPRM*. GTC would like to take this opportunity to Comment on the Commission’s *NPRM*, generally, and Reply to specific suggestions of commenting parties.

#### **I. ALTHOUGH COMMENDABLE, THE COMMISSION’S PROPOSED RULES ARE STILL EXCESSIVELY BURDENSOME AND COSTLY**

GTC applauds the Commission for initiating the instant rulemaking proceeding and for proposing the regulatory relief contained therein. Such relief, on its face, is substantially similar to the relief sought in the GTC Petition and supported by Qwest (formerly, US WEST) in its March 3, 2000 Statement in Support of [GTC’s]Petition for Rulemaking.

The Commission’s elimination of the waiver requirement will, undoubtedly, reduce the regulatory costs associated with carrier-to-carrier transactions involving the sale or transfer of customer bases -- no longer will carriers be required to draft and file formal “Petitions” or “Requests” for waiver of the FCC’s rules and then wait up to several months for grant prior to effectuating these, admittedly, “routine business transactions.” *NPRM* at ¶ 4. Also eliminated by

the proposed rule changes is the unnecessary and costly burden, placed on the Commission itself, of having to review such petitions.

Unfortunately, however, although the proposed rules alleviate some of the regulatory burdens and legal expenses associated with the preparation and filing of the waiver petition itself, the Commission appears unwilling to streamline its regulatory treatment of these “routine business transactions” to the appropriate extent. For instance, although carriers will no longer be required to prepare and file formal waiver requests, the Commission is considering a proposal that would obligate carriers to notify it of a sale or transfer not later than 30 days before the closing of the transaction. *NPRM* at ¶ 6. As noted by Verizon, “such a requirement would be essentially the same as the waiver filing process that exists today and would not result in any ‘streamlining’ for the carriers.”<sup>1</sup> GTC is opposed to any mandatory FCC pre-notification rule as such a requirement increases costs and opens the door to potential unnecessary regulatory delay.

The Commission is also considering requiring carriers to make a filing to certify compliance with FCC rules and “any outstanding Commission orders.” *Id.* As WorldCom aptly points out, such a requirement is not only overly broad, it is vague and would require an unreasonable amount of due diligence prior to the making and filing of such a certification statement.<sup>2</sup> GTC believes that the Commission can and should rest on a carrier’s general duty to comply with the Commission’s rules and regulations.

Additionally, GTC believes that the Commission’s proposed rules continue to place excessive and unnecessary transactional and business costs on carriers. For instance, the Commission’s proposal to require pre-transfer customer notifications no less than 30 days prior to the closing of the transaction has the potential to create a costly administrative burden on carriers in instances in which a transaction is negotiated and consummated in less than one month. Under such a circumstance, it is not possible for a carrier to provide notice “no less than 30 days prior to the closing” unless the carrier delays closing the transaction for several weeks

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<sup>1</sup> Comments of Verizon at 3.

<sup>2</sup> Comments of WorldCom at 7.

(for the sole purpose of complying with the Commission's notice requirement). Such delay is not only costly to the purchasing carrier, for it is deprived of revenue for each day the closing is delayed, it is also costly to the transferring carrier, for it is forced to fund its operations despite an obvious desire or need to sell off assets. GTC proposes that the Commission permit customer notification at any time up until the closing of the transaction in order to avoid the costly and unfortunate result described above.

Also, the Commission's proposal to require carriers to provide post-transfer notifications in addition to pre-transfer notifications is unnecessary and costly. Having counseled clients that were required to provide both pre- and post-transfer notifications under the Commission's "waiver" procedures, GTC understands exactly how expensive and time consuming the notification process is. Eliminating the post-transfer notification requirement cuts the printing and mailing costs in half. Although the additional cost of a second mailing may be negligible to large carriers that obtain volume discounts from print shops or can print and mail the notices in-house, GTC posits that smaller carriers do not have these luxuries. GTC suggests that the Commission consider the extreme financial constraints facing smaller carriers before imposing a post-transfer notification requirement on them.

Taken together, the regulatory filings and additional burdens associated with the aforementioned proposals may make the Commission's elimination of the waiver requirement a zero sum gain for most carriers. Rather than replacing one unnecessary burden with other unnecessary regulatory and transactional burdens, GTC proposes that the Commission adopt simple, straightforward guidelines that provide carriers with broad flexibility in how they choose to notify customers affected by carrier-to-carrier customer base sales. GTC also urges the Commission to refrain from requiring carriers to file any formal regulatory filings beyond a simple post-transaction letter that: 1) notifies the Commission of the transaction; and 2) includes a copy of the notification that was sent to affected customers.

## **II. TRANSFERRING CARRIER SHOULD BE RESPONSIBLE FOR UNRESOLVED COMPLAINTS IN THE ABSENCE OF A CONTRACTUAL AGREEMENT TO THE CONTRARY**

GTC agrees with Comments opposing the imposition of a rule requiring the acquiring carrier to agree to handle service complaints from customers of the transferring carrier regarding an incident occurring prior to the transfer.<sup>3</sup> Not only does such a proposal make little sense from a practical business standpoint, as indicated in WorldCom's comments, it is also a requirement that may well be impossible for some acquiring carriers to comply with due to technical or technology difficulties. As Sprint informed the Commission, it is very likely that the original carrier either: 1) utilized a different software system than the acquiring carrier; 2) recorded customer complaints using different nomenclature; or 3) failed to adequately record complaints, period. All of these factors weigh against the Commission imposing a requirement that the acquiring carrier assume responsibility for service complaints arising prior to the transfer. Therefore, in the absence of a mutually agreed upon contractual provision to the contrary, the Commission should adopt the position that the transferring carrier shall remain responsible for any unresolved customer complaints originating prior to the transfer.

Moreover, the Commission should leave the decision up to the private parties to determine which carrier is responsible for handling and resolving customer complaints "arising out of" the transfer. It is not the Commission's duty to determine which carrier is better equipped to handle complaints arising out of customer base transfers. As such, it is advisable to allow the carriers involved in the transaction the flexibility to make the determination on their own.

## **III. THE COMMISSION SHOULD NOT ADOPT DIFFERENT RULES FOR "UNSCRUPULOUS" CARRIERS, BUT SHOULD TREAT ALL CARRIERS EQUALLY**

The Commission also sought comment on whether it should adopt different rules applicable to customer base transfers by "unscrupulous carriers . . . attempt[ing] to evade the

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<sup>3</sup> See e.g., Comments of Sprint at 5 and WorldCom at 6.

repercussions of enforcement actions.” NPRM at ¶ 7. GTC agrees with parties advising against such a tact.<sup>4</sup> In particular, GTC espouses ASCENT’s position in that “[s]imply by virtue of acquiring a customer base a carrier does not take on responsibility for a previous carrier’s violations . . .,” not only of the Commission’s carrier change rules, but any FCC rule or regulation. And that “any attempt by the Commission to saddle a new carrier with the sins of an old carrier would turn well-established concepts of equity upside down.”<sup>5</sup>

### **CONCLUSION**

For the reasons discussed above, GTC hereby urges the Commission to adopt its proposal for expediting procedures for the handling of the sale or transfer of subscribers in a manner that is consistent with the above Comments.

Respectfully submitted,

**GLOBAL TELECOMPETITION  
CONSULTANTS, INC. (“GTC”)**

By 

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Dated: March 2, 2001

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<sup>4</sup> See e.g., Comments of USTA at 5, ASCENT at 9, IDT at 10 and Sprint at 6.

<sup>5</sup> Comments of ASCENT at 9.